

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MAXELL, LTD.,

Plaintiff,

v.

ZTE CORPORATION, ZTE USA INC.,

Defendants.

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CIVIL ACTION NO. 5:16-CV-00179-RWS

ORDER

Before the Court are the parties' motion *in limine*. Docket Nos. 133, 135. The Court rules on the motions as follows:

Plaintiff's Motions in Limine (Docket No. 135)

Plaintiff's MIL No. 1. The motion *in limine* is **GRANTED**. Neither party shall introduce any references, evidence, testimony (including expert testimony, or argument regarding, or inquire about or elicit any testimony concerning the filing or institution of any *inter partes* review (IPR) proceedings for the asserted patents. This applies to both institution decisions and any final written decisions.

Plaintiff's MIL No. 2. The motion *in limine* is **GRANTED-IN-PART**. Parties shall avoid references to Maxell as litigious, but parties may present evidence related to Maxell's business model.

Plaintiff's MIL No. 3. The motion *in limine* is **DENIED**.

Plaintiff's MIL No. 4. The motion *in limine* is **GRANTED AS AGREED**.

Plaintiff's MIL No. 5. The motion *in limine* is **GRANTED** with respect to any practicing-the-prior-art argument or evidence. Defendant is entitled to cross-examine an infringement expert as to whether their opinion is consistent with the invalidity expert and vice versa. Neither party shall elicit testimony or present argument contrary to the claim construction.

Plaintiff's MIL No. 6. The motion *in limine* is **CARRIED** to be considered in light of the deposition designations.

Plaintiff's MIL No. 7. The motion *in limine* is **GRANTED**.

Plaintiff's MIL No. 8. The motion *in limine* is **GRANTED**, and the parties are directed to approach before eliciting any testimony or presenting any argument relating to consumer costs.

Plaintiff's MIL No. 9. The motion *in limine* is **GRANTED**. Defendant is permitted to present argument and evidence to support its belief that the examiner made a mistake in this particular case.

Plaintiff's MIL No. 10. The motion *in limine* is **GRANTED AS AGREED** with respect to non-accused ZTE products but **DENIED** with respect to ZTE's marking defense and reference to Google Maps as a noninfringing alternative.

Defendant's Motion in Limine (Docket No. 133)

ZTE's MIL No. 1. The motion *in limine* is **GRANTED**. If ZTE argues at trial, however, that future sales are speculative, the door may be opened to Maxell addressing the issue as well. The Court will address this dispute as it arises at trial.

ZTE's MIL No. 2. The motion *in limine* is **CARRIED**.

ZTE's MIL No. 3. The motion *in limine* is **DENIED**.

ZTE's MIL No. 4. The motion *in limine* is **CARRIED**.

ZTE's MIL No. 5. The motion *in limine* is **GRANTED AS AGREED**.

ZTE's MIL No. 6. The motion *in limine* is **GRANTED AS AGREED**. The motion does not prevent Plaintiff from relying on evidence related to the accused products.

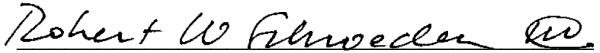
ZTE's MIL No. 7. The motion *in limine* is **CARRIED**.

ZTE's MIL No. 8. The motion *in limine* is **GRANTED**.

ZTE's MIL No. 9. The motion *in limine* is **GRANTED AS AGREED**.

ZTE's MIL No. 10. The motion *in limine* is **CARRIED**.

SIGNED this 6th day of June, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE